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Before the  
Federal Communications Commission  
Washington, DC 20554

Federal Communications Commission  
Office of Secretary

In the Matter of )  
 )  
AJI Broadcasting, Inc. ) MM Docket No. 96-92  
 )  
Order to Show Cause Why the License )  
for Station KYEG(FM), Canadian, Texas, )  
Should Not Be Revoked )

DOCKET FILE COPY ORIGINAL

To: Administrative Law Judge  
Edward Luton

**MASS MEDIA BUREAU'S**  
**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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## I. Preliminary Statement

1. By *Order to Show Cause and Hearing Designation Order*, DA 96-584 (MMB) (released April 16, 1996) ("*Show Cause Order*"), the Assistant Chief, Audio Services Division, Mass Media Bureau, ordered AJI Broadcasting, Inc. ("AJI") to show cause why its license for station KRBG(FM),<sup>1</sup> Canadian, Texas, should not be revoked upon the following issues:

- (a). To determine whether AJI Broadcasting, Inc. has the capability and intent to expeditiously resume the broadcast operations of [KYEG(FM)], consistent with the Commission's Rules.
- (b). To determine whether AJI Broadcasting, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.
- (c). To determine, in light of the evidence adduced pursuant to the foregoing issues, whether AJI Broadcasting, Inc. is qualified to be and remain the licensee of [KYEG(FM)].

2. The *Show Cause Order* placed the burden of proceeding with the introduction of the evidence and the burden of proof with respect to the designated issues on the Mass Media Bureau.

3. Hearings in this proceeding were held in Washington, DC, on July 30 and August 14, 1996, after which the record in this proceeding was closed.

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<sup>1</sup> On April 8, 1996, the call sign for Station KRBG(FM) was changed to KYEG(FM), and by the *Order* of the presiding judge issued on July 31, 1996, the caption of the proceeding was modified to reflect the change. *Order*, FCC 96M-191, Mimeo No. 61910 (released Aug. 2, 1996). To avoid confusion, the Bureau will hereinafter refer to the facility by its new call sign.

## II. Proposed Findings of Fact

4. On December 10, 1991, the Commission granted Megahype Broadcasting Partnership ("Megahype") (AJI's predecessor) a Special Temporary Authorization ("STA") for Station KYEG(FM) to be silent, after Megahype advised the Commission that, for financial reasons, it was forced to cease operations. (MMB Ex. 1, Attach. 1).

5. On August 31, 1992, the Commission granted an application to assign the license of KYEG(FM) to Carolina Communications ("Carolina"), but Carolina was unable to return the station to the air. Consequently, on September 21, 1994, Carolina filed an application to assign the station's license to AJI, and that application was granted on December 20, 1994, subject to the condition that broadcast operations be resumed within 60 days of the date of consummation. The assignment was consummated on February 16, 1995, but the station did not return to the air. By letter dated June 2, 1995, the Chief of the FM Branch advised AJI that the licensee had not complied with the condition requiring the resumption of broadcast service and asked for an explanation as to why AJI had failed to comply. The letter went on to state that actions would be taken jeopardizing the station's license and call sign if AJI did not respond within 30 days. (MMB Ex. 1, Attach. 2). When AJI did not respond to the June 2, 1995 letter, the staff sent a second similar letter on July 17, 1995. (MMB Ex. 1, Attach. 2).

6. By letter dated July 20, 1995, AJI responded to the staff's July 17 letter. In its response, AJI requested an STA to allow the station to remain silent while an authorized

facility upgrade was being completed. AJI stated that an extension was necessary due to health problems of A. Jack Inman, the sole shareholder of the licensee. (MMB Ex. 1, Attach. 3). On August 23, 1995, the Assistant Chief of the Audio Services Division granted AJI's STA request and extended its authority to remain silent until October 1, 1995. (MMB Ex. 1, Attach. 3). AJI's July 20, 1995 STA request was its last contact with the Commission prior to the Commission's designation of AJI's license for hearing on April 12, 1996. (MMB Ex. 1).

7. Inman states that, after AJI acquired the license in February 1995, he relied on John Pittman of Lumberton, North Carolina, for funds to construct the station. (Tr. 81). According to Inman, he reached an oral understanding with Pittman for the provision of funds, but, before they could reduce that understanding to writing, Pittman was killed in an automobile accident on September 16, 1995. (Tr. 81; AJI Ex. 1). As a result, Inman then began to search for a new investor. (AJI Ex. 1). After his attorney suggested that Inman attempt to sell the station, Inman entered into an agreement with Pampa Broadcasters of Pampa, Texas, to that end. Although Inman indicates that all of the necessary signatures of the parties were obtained, an assignment application was never filed with the Commission. (AJI, Ex. 1).

8. During this period AJI had a construction permit to construct the station at modified facilities. On April 1, 1996, the Chief of the Audio Services Division, however, denied AJI's application for extension of time to construct at those facilities. In doing so,

the staff rejected AJI's claims that Inman's health problems prevented construction of the facility. In that connection, the staff stated that AJI had not shown why the licensee could not have secured a contractor to proceed with the construction. The staff further found that there was a two-and-one-half month period of time, after Mr. Inman's doctor had pronounced him able to resume normal activities, that he did not make any progress. Consequently, the staff concluded that AJI had failed to show sustained progress in the construction of the station and had failed to demonstrate a firm commitment to construct. (MMB Ex. 1, Attach. 4).

9. After the failed attempt to assign the station's license to Pampa Broadcasters, AJI remained in need of an investor to assist in the station's construction. With that in mind, in June 1996, Inman met with Dain Schult ("Schult"), the President of Texrock Radio, Inc. ("Texrock"), for the purpose of obtaining financing for the construction and start-up expenses of the station. (AJI, Ex. 1). On July 18, 1996, Schult sent a letter to Inman in which he stated that it was "TR's intent to assist you in funding the construction" of the station. (AJI Ex. 1, Attach. 4). By letter to Inman dated July 29, 1996, Schult, stated that Texrock would loan AJI up to \$200,000 to construct the station and furnish it with initial operating funds. (AJI Ex. 1, Attach. 5). That letter also detailed the terms of the loan.

10. Mr. Schult's July 29, 1996 letter indicated that Texrock would be relying on funding from a third party to follow through on its commitment to fund AJI. (AJI Ex. 1, Attach. 5). Schult testified that he did not have the funds on hand to meet the amount of his proposed loan to AJI. (Tr. 93). Although he claimed that he was arranging

for loans to cover commitments made to AJI and others, he provided no letters of credit or letters of intent from any other persons or entities in support of that claim. (Tr. 96).

11. Inman has stated that he wants another opportunity to get KYEG(FM) on the air. (AJI Ex. 1). Nevertheless, he testified that, while a transmitter has been ordered, no equipment necessary to construct the station has been delivered and no actual construction has commenced. (Tr. 84-85). Further, while he stated that he has employed RDG Custom Electronics ("RDG") to supply equipment and engineers, he admitted that he has no written agreement with RDG that binds it to a schedule for constructing the station. (Tr. 91-92).

### III. Conclusions of Law

#### A. Resumption of Operation Issue

1. Based on the record in this proceeding, it cannot be concluded that AJI will expeditiously return Station KYEG(FM) to the air. The station has been off the air since 1991, and two previous licensees have tried unsuccessfully to get the station operational. There is nothing in the record, however, that would lead one to conclude that AJI can succeed where its two predecessors have not. Not only has AJI demonstrated an utter lack of diligence, but it has also failed to make any progress in the actual construction of the facility and has failed to obtain a reasonable assurance that AJI will have sufficient funds available to return the station to the air.

2. From the outset, AJI has not been responsive to Commission letters or deadlines. When the Commission granted the application approving the assignment of the license to AJI, it did so subject to the condition that broadcast operations be resumed within 60 days of the date of consummation. (MMB Ex. 1). Although the assignment was consummated on February 16, 1995, the station is still not operational. Moreover, when the Commission's staff inquired in June 1995 about AJI's failure to return the station to the air, AJI did not respond. It took a second letter on July 17, 1995, to elicit a response from the licensee, to which AJI requested a further STA to remain silent. That STA request was granted on August 23, 1995, and extended AJI's authority to remain silent until October 1, 1995, at

which time AJI allowed its STA to expire. The station has been off the air ever since without authority to remain silent.

3. Although AJI has been licensee of KYEG(FM) for more than 20 months, it has yet to make any progress in the actual construction of the facility, and none of the equipment necessary to return the station to the air has been delivered. While Inman claims that he has employed RDG to furnish equipment and engineers to build the station, he admits that he has no written agreement with RDG to bind the supplier to a schedule of construction. Consequently, AJI has presented neither a substantially constructed facility nor a solid plan for its completion. In light of the over 20 months of inactivity, it cannot be concluded that AJI has had the requisite intent to return KYEG(FM) to the air.

4. Even if a construction plan had been submitted, AJI would still be lacking the financing necessary to effectuate its proposal. Although AJI proposes to rely on the financial wherewithal of Texrock to return the station to the air, that company does not have on hand the funds necessary to do so. Moreover, it has not furnished any letters of credit or letters of intent from any third parties indicating their willingness to fund the project. That being the case, AJI cannot rely on Texrock for funds to construct the station.

5. In sum, it must be concluded that AJI does not have the capability or the intent to resume the broadcast operations of KYEG(FM) in an expeditious manner. Consequently, Issue 1 must be resolved against AJI.



## B. Sections 73.1740 and 73.1750 Issue

6. Section 73.1740(a)(4) of the Commission's Rules provides:

In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, DC, not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30-day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

7. The evidence in this case reveals that AJI has violated Section 73.1740 of the Commission's Rules, first by failing to seek an STA to remain silent when it first acquired the license and then again on October 1, 1995, by allowing its STA to expire. Consequently, that portion of Issue 2 relating to Section 73.1740 must be resolved against AJI.

8. Section 73.1750 of the Commission's Rules provides:

The licensee of each station shall notify the FCC in Washington, DC of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, DC, for cancellation.

9. The issue as to whether AJI violated Section 73.1750 must also be resolved against AJI. The station has been off the air since April 1991, and the evidence reveals that AJI has neither the capability nor intent to return it to the air.

## IV. Ultimate Conclusions

10. The record here demonstrates that AJI has failed for over 20 months to construct KYEG(FM) and return it to the air. Moreover, the record here reveals that AJI has neither the capability nor the intent to return the station to the air and has violated Section 73.1740 and 73.1750 of the Commission's Rules. Consequently, it is ultimately concluded that AJI is not qualified to remain a Commission licensee, and the license of AJI for Station KYEG(FM) must be revoked.

Respectfully submitted,

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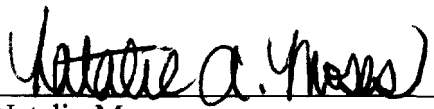
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September 24, 1996

## CERTIFICATE OF SERVICE

Natalie Moses, a secretary in the Complaints and Political Programming Branch,  
certified that she has on this 24th day of September 1996, sent by regular United States mail,  
a copy of the foregoing "Mass Media Bureau's Proposed Findings of Fact and Conclusions of  
Law" to:

A. Jack Inman  
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Natalie Moses